

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

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COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF)
CONSTELLATION NEWENERGY, INC. FOR A) DOCKET NO. E-20841A-12-0115
CERTIFICATE OF CONVENIENCE AND)
NECESSITY AUTHORIZING THE PROVISION OF) APPLICATION
COMPETITIVE RETAIL ELECTRIC SERVICES)

Pursuant to A.R.S. §§ 40-201, 40-202, 40-207, 40-281 and 40-282, Constellation NewEnergy, Inc. ("CNE") hereby applies for a certificate of convenience and necessity ("CC&N") authorizing it to provide competitive retail electric services within the State of Arizona ("Application"). In support of this Application, CNE submits the information set forth below, and that contained in the Appendices attached to this Application, which are incorporated herein by this reference.

I.

INTRODUCTION

This Application is organized with the intent of providing the Arizona Corporation Commission ("Commission") and Staff of the Arizona Corporation Commission ("Staff") with that information required or contemplated (as the case may be) by both (i) the aforesaid statutory provisions, and (ii) A.A.C. R14-2-202 and A.A.C. R14-2-1601 et seq. In addition, CNE provides a summary of the public interest that it believes would be served by granting the CC&N requested in this Application.

II.

A.A.C. R14-2-202 INFORMATION AND DISCUSSION

A. R14-2-202(A)(1)

The name, address and general contact information for CNE are as follows:

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

1 Constellation NewEnergy, Inc.
2 100 Constellation Way, Suite 1200C
3 Baltimore, MD 21202

4 Phone: (866) 237-7693
5 Fax: (410) 223-3149
6 Email: customercare@constellation.com

7 The name, address and contact information for CNE personnel in connection with this
8 Application are as follows:

9 Cynthia Brady
10 Senior Counsel
11 550 W. Washington St., Suite 300
12 Chicago, IL 60661

13 Phone: (312) 704-8518
14 Email: Cynthia.Brady@constellation.com

15 Mary Lynch
16 Vice President, Energy Policy
17 c/o Joseph Donovan
18 100 Constellation Way, Suite 500C
19 Baltimore, MD 21202

20 Phone: (916) 606-0783
21 Email: Mary.Lynch@constellation.com

22 The name, address and contact information of CNE's attorneys in connection with this
23 Application are as follows:

24 Lawrence V. Robertson, Jr.
25 Of Counsel to Munger Chadwick, PLC
26 P. O. Box 1448
27 Tubac, AZ 85646

28 Phone: (520) 398-0411
Fax: (520) 398-0412
Email: Tubaclawyer@aol.com

Robert J. Metli
Munger Chadwick, P.L.C.
2398 E. Camelback Road, Suite 240
Phoenix, AZ 85019

Phone (602) 358-7348

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

CNE, a Delaware corporation, is a subsidiary of Exelon Corporation ("Exelon"), a Delaware corporation, whose address is 100 Constellation Way, Baltimore, M.D. 21202. Attached hereto as Appendix "A" is a copy of CNE's Articles of Incorporation. Attached hereto as Appendix "B" is a list of CNE's Officers and Directors. Attached hereto as Appendix "C" is a list of CNE's affiliates that operate in retail electric or gas markets and direct subsidiaries.

B. A.A.C. R14-2-202(A)(2)

The nature and range of rates proposed to be charged for the various competitive retail electric services to be provided by CNE, together with related terms and conditions of service, are set forth in CNE's proposed Competitive Electricity Tariffs, copies of which are attached hereto as Appendix "D" and Appendix "E."¹

C. A.A.C. R14-2-202(A)(3)

As noted above, as a result of a merger which closed on March 12, 2012, CNE now is a subsidiary of Exelon; and, as such, CNE does not generate a separate audited financial statement for itself in the regular course of business. Accordingly, attached hereto as Appendix "F" is a web link to Exelon's audited financial statement for the twelve (12) months ended December 31,

¹ With respect to the provision of service to non-residential customers, CNE also uses various forms of Non-Residential Electricity Supply Agreements ("NONRES ESAs") in connection with its provision of competitive retail electric services. These NONRES ESAs contain confidential and competitively sensitive information; and, the structure and content of the NONRES ESAs is such that information of this nature cannot easily be redacted. Accordingly, in the event that the Staff desires to review the NONRES ESAs, and following the execution of a Protective Agreement with the Staff, CNE will provide the Staff with unredacted samples of the types of NONRES ESAs CNE proposes to use in Arizona if the CC&N herein requested is granted. However, unredacted copies will not be filed with the Commission's Docket Control as a part of this Application. With respect to the provision of service to residential customers, CNE typically conducts marketing campaigns through telephone, internet, or direct mail solicitations. Examples of marketing materials used in other jurisdictions by CNE for such purpose will be made available in the event the Staff desires to review them. Upon contracting for service, CNE provides Residential Terms and Conditions documentation ("RES Ts&Cs") to the customer and, in the case of door to door and telephonic sales, conducts a third party verification process to confirm residential customers' desire and decisions to initiate service. The RES Ts&Cs and the process by which CNE obtains third party verifications contain confidential and competitively sensitive information. Accordingly, in the event that the Staff desires to review CNE's marketing materials, RES Ts&Cs and/or protocols for third party verifications, and following the execution of a Protective Agreement with the Staff, CNE will provide the Staff with unredacted samples of said documentation and/or protocols.

1 2011 as well as a web link to former parent company Constellation Energy Group, Inc's audited
2 financial statement for the twelve months ended December 31, 2011.²

3 **D. A.A.C. R14-2-202(A)(4)**

4 CNE proposes to offer competitive retail electric services within the electric service areas
5 of Arizona Public Service Company ("APS"), Salt River Project ("SRP") and Tucson Electric
6 Power Company ("TEP").

7 In that regard, attached hereto as Appendix "G," is a description of CNE's substantial
8 experience in providing competitive retail electric services in other jurisdictions.

9 **E. A.A.C. R14-2-202(A)(5)**

10 A.R.S. § 40-209 indicates that a franchise from cities, towns or counties is not required
11 for the type of competitive retail electric services which CNE proposes to provide to customers.
12 However, consistent with A.R.S. § 40-209, CNE hereby indicates its willingness to pay franchise
13 fees required of licensed competitive retail electric service providers related to any retail
14 electricity sale made in Arizona, provided that the imposition of any such fee by any city, town
15 or county is lawful under Arizona law.

16 **F. A.A.C. R14-2-202(A)(6)**

17 CNE is proposing to offer electric generation and aggregation services to both non-
18 residential and residential customers within the respective service areas of APS, SRP and TEP
19 pursuant to the applicable provisions of CNE's proposed Competitive Electricity Tariffs and any
20 relevant statutes and/or regulations lawfully promulgated by the Commission.

21 **G. A.A.C. R14-2-202(A)(7)**

22 CNE is prepared to provide such information, in addition to that information contained
23 within or accompanying this Application, as the Commission may order or the Staff hereafter by
24 written directive may request, consistent with the Commission's requirements for applications
25 filed pursuant to A.R.S. §§ 40-281 and 40-282, such as the instant Application.

26
27 ² In that regard, in connection with testimony it will provide in support of this Application, as and when directed by
28 the Commission, CNE intends to discuss why it believes that the credit commitment and financial resource support
it intends to devote to its provision of service in Arizona will assist the Commission in making that determination of
"fair value" required under Arizona law.

III.

A.A.C. R14-2-1601 ET SEQ.

INFORMATION AND DISCUSSION

PREFATORY COMMENT: CNE recognizes that some questions may surround the current legal status of certain of the regulations set forth at A.A.C. R14-2-1601 et seq., as a result of the decision of the Arizona Court of Appeals in Phelps Dodge Corporation v. Arizona Electric Power Cooperative, Inc., 207 Ariz. 95, 83 P.3d 573 (Ct. App. 2004). However, CNE is providing information contemplated by those regulations, which might be pertinent to the subject matter of this Application, as background information for the Commission incident to an exercise of its broad authority and discretion under A.R.S. §§ 40-201, 40-202, 40-207, 40-281 and 40-282 to grant CC&Ns of the nature requested by this Application.

In that regard, at this stage in the application process, CNE's Application and supporting Appendices will focus on providing, as additional background, that information contemplated by A.A.C. R14-2-1603.³

A. A.A.C. R14-2-1603(A)

CNE believes that this Application and the supporting Appendices are responsive to that activity contemplated by this subsection.

B. A.A.C. R14-2-1603(B)(1)

CNE proposes to offer electric generation and aggregation competitive retail electric services to both non-residential and residential customers located within the electric service areas of APS, SRP and TEP. In that regard, CNE anticipates that associated meter reading and meter service services will be provided by entities and/or persons authorized by the Commission and/or other permitting agency(ies) under applicable law. In addition, CNE also anticipates that the Arizona Independent Scheduling Administrator ("AISA"), its predecessor or equivalent will be

³ More specifically, of all of the various sections and subsections set forth in A.A.C. R14-2-1601 et seq., only R14-2-1603 appears to address information that it is contemplated should accompany an application for a CC&N to provide competitive retail electric services. Generally speaking, the remaining sections and subsections address other matters relating to retail electric competition, rather than information which it is contemplated might be useful to the Commission in connection with its consideration of and decision upon an application for a CC&N to provide competitive retail electric services.

involved, as necessary or appropriate and as contemplated under the aforesaid utilities' Open Access Transmission Tariffs, in connection with CNE's provision of competitive retail electric services.

C. A.A.C. R14-2-1603(B)(2)

See Section II(A) above of this Application and Appendices "A" and "B" hereto.

D. A.A.C. R14-2-1603(B)(3)

See the proposed Competitive Electricity Tariffs attached to this Application as Appendix "D" and Appendix "E," and the discussion set forth in Footnote 1 above.

E. A.A.C. R14-2-1603(B)(4)

Appendix "H" to this Application sets forth a description of CNE's technical ability to obtain and deliver electricity on behalf of the customers it proposes to serve, and to provide the proposed services. As noted above, CNE also anticipates coordinating with authorized meter reader and meter service services providers and AISA, its predecessor or equivalent as necessary or appropriate.

F. A.A.C. R14-2-1603(B)(5)

As noted in Section II(C) above, CNE is a subsidiary of Exelon, and as such does not generate a separate audited financial statement. In that regard, and as noted above, attached as Appendix "F" to this Application is a web link to Exelon's audited financial statement for the twelve (12) months ended December 31, 2011 as well as a web link to former parent company Constellation Energy Group, Inc's audited financial statement for the twelve months ended December 31, 2011.⁴

G. A.A.C. R14-2-1603(B)(6)

See Section II(A) above and Appendix "A" to this Application.

⁴ In addition, if requested by the Staff, and under the auspices of the Protective Agreement referred to in Footnote 1 above, CNE will also provide the Staff with copies of (i) an unaudited income statement and balance sheet for CNE for the twelve (12) months ended December 31, 2011, and (ii) projected financial statements for CNE for the twelve (12) months ended December 31, 2012.

1 **H. A.A.C. R14-2-1603(B)(7)**

2 CNE is not an affiliate of any "Affected Utility," as that term is defined in A.A.C. R14-2-
3 1601(1).

4 **I. A.A.C. R14-2-1603(B)(8)**

5 CNE is prepared to provide such "other information as the Commission or the Staff may
6 request" in connection with the Commission's processing of and decision upon this Application.

7 **J. A.A.C. R14-2-1603(C)**

8 CNE will timely advise the Commission during the Commission's processing of this
9 Application as to any changes which might occur affecting information contained in this
10 Application and/or the supporting Appendices.

11 **K. A.A.C. R14-2-1603(D)**

12 CNE agrees to provide such public notice of this Application as the Commission may
13 require.

14 **L. A.A.C. R14-2-1603(E)**

15 Concurrent with the filing of this Application and supporting Appendices with the
16 Commission, CNE will provide copies of the same to appropriate representatives of APS, SRP
17 and TEP, in whose respective electric service areas CNE is proposing to offer competitive retail
18 electric services. In addition, no later than ten (10) days after the Application has been filed with
19 the Commission, CNE will provide written notice to the Commission through the Commission's
20 Docket Control that CNE has provided notice and copies of this Application to APS, SRP and
21 TEP. Such written notice to the Commission will include the name and address of the person(s)
22 at APS, SRP and TEP who received a copy of this Application.

23 **M. A.A.C. R14-2-1603(F)**

24 This subsection pertains to the authority of the Commission, and does not appear to
25 contemplate the submission of any information by CNE at this time. However, to the extent that
26 this subsection speaks to the need for the Commission to potentially limit the term of the CC&N
27 granted to CNE based on its experience in providing retail electric service, as indicated in
28 Section II(D) above and in Appendix "G," CNE has substantial experience providing the type(s)

1 of competitive retail electric services which are the subject of this Application in other
2 jurisdictions.

3 **N. A.A.C. R14-2-1603(G)**

4 This subsection also pertains to the authority of the Commission in relation to the
5 granting of a CC&N for the provision of competitive retail electric services, and does not appear
6 to contemplate the provision of any specific information by CNE at this time.

7 **O. A.A.C. R14-2-1603(H)**

8 CNE intends to endeavor to negotiate a "Service Acquisition Agreement," as that term is
9 defined in A.A.C. R14-2-1601(16), with APS, SRP and TEP, respectively. Following execution
10 of such Service Acquisition Agreement(s), CNE will submit the same to the Commission for
11 review and approval.

12 **P. A.A.C. R14-2-1603(I)**

13 Assuming Commission issuance of a decision granting CNE a CC&N to provide
14 competitive retail electric services, CNE agrees in advance to comply with each of the types of
15 compliance conditions to such a decision specifically contemplated by this subsection.

16 **Q. A.A.C. R14-2-1603(J)**

17 As of this juncture, CNE does not anticipate collecting any funds (including deposits or
18 advances) prior to providing competitive retail electric services to customers. Therefore, CNE
19 does not anticipate that a performance bond will be necessary in that regard.

20 **R. A.A.C. R14-2-1603(K)**

21 This subsection pertains to time-frames for the Commission's processing of an
22 application for a CC&N to provide competitive retail electric services. As such, it does not
23 appear to contemplate the filing of any particular information in connection with the initial
24 submission of such an application.

25 **IV.**

26 **ADDITIONAL INFORMATION**

27 The preceding sections of this Application and the attachments hereto provide all of the
28 information required or contemplated (as the case may be) by (i) A.R.S. §§ 40-201, 40-202, 40-

1 207, 40-281 and 40-282, and (ii) A.A.C. R14-2-202 and A.A.C. R14-2-1601 et seq., in
2 connection with the Commission's consideration of and decision upon this Application. In
3 addition, CNE includes a discussion in Section V below as to why the public interest will be
4 served by granting CNE the CC&N requested by this Application. In the event that the
5 Commission and/or Staff should request further information in connection with the
6 Commission's processing of this Application, CNE will endeavor to be responsive to such
7 request.

8 In that regard, CNE anticipates that the Commission's Hearing Division will issue a
9 Procedural Order in connection with the Commission's consideration of this Application
10 providing, *inter alia*, for (i) provision of public notice, (ii) intervention, (iii) the filing of one or
11 more rounds of prepared testimony by parties of record, (iv) appropriate discovery procedures,
12 and (v) an evidentiary hearing on this Application. Through its prepared testimony, responses to
13 discovery requests and/or oral testimony at the evidentiary hearing, CNE will provide such
14 further information as may be relevant to a Commission decision upon this Application.

15 **V.**

16 **ISSUANCE OF REQUESTED CC&N**
17 **WOULD BE IN THE PUBLIC INTEREST**

18 The issuance of a decision granting CNE a CC&N to provide competitive retail electric
19 service as hereinabove described would be in the public interest. As herein noted, CNE is
20 proposing to offer the benefits of retail electric competition to both residential and non-
21 residential consumers. In so doing, CNE would be providing such consumers with potentially
22 lower energy costs and more innovative product and service options than exist under their
23 present sole supplier situation(s). These options may include expanded access to renewable
24 energy resources and advanced energy technologies, together with associated economic and
25 environmental benefits.

26 In connection with the foregoing, CNE is well-qualified to participate in the resumption
27 of retail electric competition in Arizona. The company has many years of experience providing a
28 wide array of such services to residential and non-residential customers throughout the United

LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

1 States, and has ample access to such managerial, financial and technological resources as may be
2 necessary or appropriate in connection with a full discharge of its responsibilities as a certificated
3 provider of competitive retail electric services within the service areas of APS, SRP and TEP.

4 VI.

5 CONCLUSION

6 WHEREFORE, based upon the information set forth above and the Appendices attached
7 to this Application, CNE hereby requests that the Commission (i) issue an appropriate order
8 establishing a process for and scheduling an evidentiary hearing on this Application, and (ii)
9 thereafter issue a decision granting CNE a CC&N to provide competitive retail electric services
10 within the electric service areas of APS, SRP and TEP, as hereinabove requested.

11
12 Dated this 20th day of March 2012.

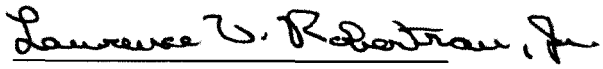
13 Respectfully Submitted,

14 Lawrence V. Robertson, Jr.,
15 of Counsel to Munger Chadwick, P.L.C.

16 and

17 Robert J. Metli
18 Munger Chadwick, P.L.C.
19 Attorneys for Constellation NewEnergy, Inc.

20 By:

21 
22 Lawrence V. Robertson, Jr.,

23
24 The original and thirteen (13) copies of the
25 foregoing Application will be mailed the
26 26th day of March 2012 for filing with:

27 Docket Control
28 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

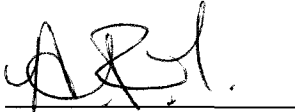
LAWRENCE V. ROBERTSON, JR.
ATTORNEY AT LAW
P.O. Box 1448
Tubac, Arizona 85646
(520) 398-0411

1 A copy of the foregoing Application will be
2 emailed/mailed that same date to:

3 Lyn A. Farmer,
4 Chief Administrative Law Judge
5 Hearing Division
6 Arizona Corporation Commission
7 1200 West Washington Street
8 Phoenix, Arizona 85007

9 Steve Olea, Director
10 Utilities Division
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Janice M. Alward, Chief Legal Counsel
15 Legal Division
16 Arizona Corporation Commission
17 1200 W Washington
18 Phoenix, AZ 85007-2927

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Appendix “A”

**Constellation NewEnergy, Inc.
Certificate of Convenience and
Necessity Application
March 20, 2012**

APPENDIX A

Provide CNE's Articles of Incorporation.

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "CONSTELLATION NEWENERGY, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE TWENTY-SEVENTH DAY OF AUGUST, A.D. 1998, AT 9 O'CLOCK A.M.

CERTIFICATE OF AGREEMENT OF MERGER, FILED THE NINTH DAY OF OCTOBER, A.D. 1998, AT 9 O'CLOCK A.M.

CERTIFICATE OF MERGER, FILED THE TWENTY-THIRD DAY OF JULY, A.D. 1999, AT 4 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "NEW ENERGY VENTURES, INC." TO "NEWENERGY, INC.", FILED THE TWELFTH DAY OF AUGUST, A.D. 1999, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "NEWENERGY, INC." TO "AES NEWENERGY, INC.", FILED THE FIFTEENTH DAY OF NOVEMBER, A.D. 2000, AT 9 O'CLOCK A.M.

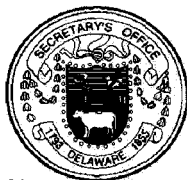
CERTIFICATE OF MERGER, FILED THE TWENTY-SIXTH DAY OF DECEMBER, A.D. 2000, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF

2938363 8100H

080542167

You may verify this certificate online
at corp.delaware.gov/authver.shtml



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6588297

DATE: 05-13-08

Delaware

PAGE 2

The First State

THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF
DECEMBER, A.D. 2000.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "AES
NEWENERGY, INC." TO "CONSTELLATION NEWENERGY, INC.", FILED THE
NINTH DAY OF SEPTEMBER, A.D. 2002, AT 10 O'CLOCK A.M.

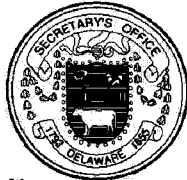
CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE
TWENTY-SEVENTH DAY OF SEPTEMBER, A.D. 2002, AT 10 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID
CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE
AFORESAID CORPORATION, "CONSTELLATION NEWENERGY, INC.".

2938363 8100H

080542167

You may verify this certificate online
at corp.delaware.gov/authver.shtml



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6588297

DATE: 05-13-08

CERTIFICATE OF INCORPORATION

OF

NEW ENERGY VENTURES, INC.

FIRST. The name of this corporation shall be:

New Energy Ventures, Inc.

SECOND. Its registered office in the State of Delaware is located at 1013 Centre Road, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

THIRD. The purpose or purposes of the corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which this corporation is authorized to issue is:

Twenty million (20,000,000) shares of common stock with a par value of \$0.001 per share.

FIFTH. The name and address of the incorporator is as follows:

Ingrid A. Myers
Morgan, Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132

SIXTH. The Board of Directors shall have the power to adopt, amend or repeal the bylaws.

SEVENTH. No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law, (i) for breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct of a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article Seventh shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

IN WITNESS WHEREOF, The undersigned being the incorporator hereinbefore named, has executed, signed and acknowledged this certificate of incorporation this 26th day of August, A.D., 1998.


Ingrid A. Myers, Incorporator

AGREEMENT AND PLAN OF MERGER

MERGING

NEW ENERGY VENTURES, L.L.C.
(an Arizona limited liability company)

INTO

NEW ENERGY VENTURES, INC.
(a Delaware corporation)

AGREEMENT AND PLAN OF MERGER (the "Agreement"), dated as of October 9, 1998, by and between NEW ENERGY VENTURES, L.L.C., an Arizona limited liability company (the "Merging Entity") and NEW ENERGY VENTURES, INC., a Delaware corporation (the "Surviving Corporation").

WHEREAS, the Board of Directors of the Surviving Corporation has determined that the merger of the Merging Entity with and into the Surviving Corporation, upon the terms and subject to the conditions set forth in this Agreement (the "Merger"), is fair to, and in the best interests of, the Surviving Corporation and its stockholders;

WHEREAS, the members of the Merging Entity have determined that the Merger is in the best interests of the Merging Entity and its members;

WHEREAS, the members of the Merging Entity and the stockholders and the members of the Board of Directors of the Surviving Corporation have each approved and adopted this Agreement and approved the Merger; and

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, the parties agree as follows:

1. **The Merger.** Upon the terms and subject to the provisions of this Agreement and in accordance with Section 264 of the Delaware General Corporation Law ("DGCL"), at the Effective Date (as defined herein), the Merging Entity shall be merged with and into the Surviving Corporation. As a result of the Merger, the separate corporate existence of the Merging Entity shall cease and the Surviving Corporation shall continue.
2. **Effective Date.** As is required by DGCL Section 264, a copy of this agreement shall be filed with the Secretary of State of the State of Delaware. Pursuant to DGCL Sections 251 and 103, the Merger shall become effective upon the filing of this Agreement on October 9, 1998.

3. Articles of Incorporation and Bylaws of the Surviving Corporation. At the Effective Date, the Certificate of Incorporation and By-laws of the Surviving Corporation shall be its Certificate of Incorporation and By-laws and shall not be amended.
4. Directors and Officers of the Surviving Corporation. The directors and officers of Surviving Corporation immediately prior to the Effective Date shall be the initial directors and officers of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Corporation.
5. Conversion of Securities. The manner and basis of converting the membership interests of the Merging Entity and the stock or other securities or obligations of the Surviving Corporation, or the cash or other consideration to be paid or delivered upon surrender of the member interest of the Merging Entity is as follows:
 - A. At the Effective Date, by virtue of the Merger and without any action on the part of any of the parties hereto or the holders of the membership interests of the Merging Entity and the capital stock of the Surviving Corporation, each share of the capital stock of the Surviving Corporation issued and outstanding immediately prior to the effective date of the merger shall thereupon, without further action, remain one share of the capital stock of the Surviving Corporation. Each membership interest in the Merging Entity shall be converted into and become 5,000,000 fully paid and nonassessable shares of common stock, par value \$.001, of the Surviving Corporation (the "Merger Consideration").
 - B. The membership interests of the Merging Entity shall be cancelled forthwith on the effective date of the merger, and any certificates representing such interests shall be surrendered and cancelled and the holders of such interests shall cease to have any ownership or other rights with respect thereto, except the right to receive the Merger Consideration.
 - C. All shares of the Surviving Corporation's common stock that are held by the Surviving Corporation after the effective date shall be retired and shall resume the status of authorized and unissued shares of common stock.
6. Effect of the Merger. Upon becoming effective, the Merger shall have the effects set forth in the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Date, all properties, rights, privileges, powers and franchises of the Merging Entity shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Merging Entity shall become the debts, liabilities and duties of the Surviving Corporation without further act or deed; and the title to any real estate, or any interest therein, vested in either the Merging Entity or the Surviving Corporation shall be deemed to occur by operation of law, and no consent or approval of any other person shall be required in connection with any such transfer or vesting unless such consent or approval

is specifically required by express provision in a contract, agreement, decree, order or other instrument to which the Merging Entity or the Surviving Corporation is a party or by which it is bound.


7. Authorization. If, at any time after the effective date, the Surviving Corporation shall consider or be advised that any instruments or further assurances are necessary or desirable in order to evidence the vesting in the Surviving Corporation of the title of the Merging Entity to any of its properties or rights, privileges, powers, franchise or immunities, then the last acting officers of the Merging Entity or the corresponding officers of the Surviving Corporation are hereby authorized to execute and acknowledge all such instruments of further assurance and to do such other acts or things in the name of the Merging Entity as may be requisite or desirable to carry out the intent and purposes of this Agreement.

* * *

IN WITNESS WHEREOF, this Agreement and Plan of Merger has been duly executed by the parties as of the date first set forth above.

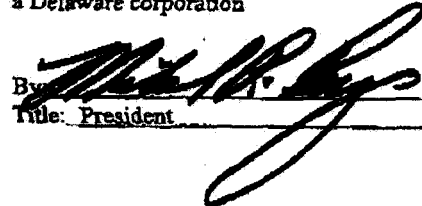
"Merging Entity"

NEW ENERGY VENTURES, L.L.C.,
an Arizona limited liability company


Title: President of New Energy Ventures
Holdings, LLC, Administrative
Member of New Energy Ventures, L.L.C.

"Surviving Corporation"

NEW ENERGY VENTURES, INC.,
a Delaware corporation

By 
Title: President

I hereby certify that I am the duly elected, qualified and acting Secretary of the Surviving Corporation, and that this Agreement and Plan of Merger was approved and adopted by the Surviving Corporation on October 9, 1998 by unanimous written consent of the members of the Board of Directors.

Dated effective the 9th day of October 1998.


Jeffrey W. Martin, Secretary

JUL-27-99 TUE 10:08

NCR 7341450

FAX NO. 7341476

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:00 PM 07/23/1999
991308114 - 2938363

**CERTIFICATE OF MERGER
MERGING
NV ACQUISITION CORPORATION
WITH AND INTO
NEW ENERGY VENTURES, INC.**

Pursuant to Section 251 of the General Corporation Law of
the State of Delaware

New Energy Ventures, Inc., a Delaware corporation ("Surviving Co."),
DOES HEREBY CERTIFY AS FOLLOWS:

FIRST: That NV Acquisition Corporation, a Delaware corporation ("Old Co.") was incorporated on May 13, 1999 pursuant to the Delaware General Corporation Law (the "Delaware Law"), and that Surviving Co. was incorporated on August 27, 1998, pursuant to the Delaware Law.

SECOND: That an Agreement and Plan of Merger (the "Merger Agreement"), dated as of June 17, 1999, among The AES Corporation, a Delaware corporation, Surviving Co., Old Co., New Energy Holdings, L.L.C., a Delaware limited liability company, and MEH Corporation, an Arizona corporation, setting forth the terms and conditions of the merger of Old Co. with and into Surviving Co. (the "Merger"), has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 251 of the Delaware Law.

THIRD: That the name of the surviving corporation (the "Surviving Corporation") shall be "New Energy Ventures, Inc."

FOURTH: That pursuant to the Merger Agreement, the Certificate of Incorporation of the Surviving Corporation is amended to read as set forth in Exhibit A hereto.

FIFTH: That an executed copy of the Merger Agreement is on file at the principal place of business of the Surviving Corporation at the following address:

1000 Wilshire Blvd., Suite 500
Los Angeles, CA 90017

SIXTH: That a copy of the Merger Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: That the Merger shall become effective at 5:00 p.m. on the day of filing of this Certificate of Merger with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, Surviving Co. has caused this Certificate of Merger to be executed in its corporate name this 23rd day of July, 1999.

NEW ENERGY VENTURES, INC.

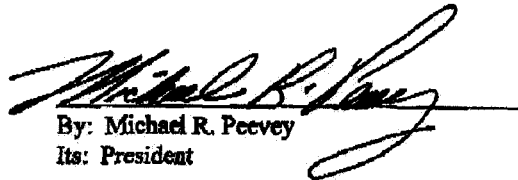

By: Michael R. Peevey
Its: President

Exhibit A

**CERTIFICATE OF INCORPORATION
OF
NEW ENERGY VENTURES, INC.**

FIRST. The name of the corporation is New Energy Ventures, Inc.

SECOND. The address of the registered office in the State of Delaware is located at 1013 Centre Road, in the City of Wilmington, County of New Castle and its registered agent at such address is CORPORATION SERVICE COMPANY.

THIRD. The purpose or purposes of the corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of stock which this corporation is authorized to issue is:

One hundred (100) shares with a par value of One Cent (.01) per share, amounting to One Dollar (\$1.00).

FIFTH. The name and mailing address of the sole incorporator is as follows:

Ingrid A. Myers
c/o Morgan, Lewis & Bockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132

SIXTH. The Board of Directors shall have the power to adopt, amend or repeal the bylaws.

SEVENTH. No director shall be personally liable to the corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law, (i) for breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived any improper personal benefit. No amendment to or repeal of this Article Seventh shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
NEW ENERGY VENTURES, INC.**

**Pursuant to Section 242 of the Delaware
General Corporation Law**

**NEW ENERGY VENTURES, INC. a Delaware corporation, hereby certifies as
follows:**

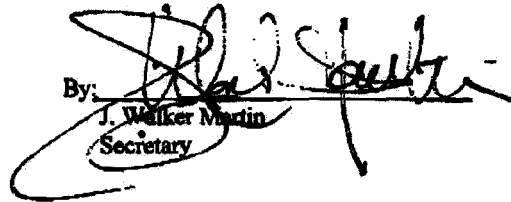
**FIRST: The Certificate of Incorporation of the Corporation was filed in the
Office of the Secretary of State of Delaware on August 27, 1998 and a certified copy was
recorded in the Office of the Recorder of Kent County, Delaware. The Certificate of
Incorporation has to date not been amended.**

**SECOND: The Certificate of Incorporation is amended to change the name of the
Corporation by striking ARTICLE FIRST of the Certificate of Incorporation in its entirety and
inserting the following new ARTICLE FIRST as follows:**

**"FIRST. The name of this corporation shall be:
NewEnergy, Inc."**

**THIRD: This Amendment to the Certificate of Incorporation was duly adopted
by the unanimous written consent of the Board of Directors and by the unanimous written
consent of the holders of all outstanding stock of the Corporation entitled to vote in accordance
with Sections 141(f), 228 and 242 of the Delaware General Corporation Law.**

IN WITNESS WHEREOF, the Corporation has caused this Certificate of
Amendment of its Certificate of Incorporation to be executed by its Secretary this 1st day of
July, 1999.

By: 
J. Walker Martin
Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 11/15/2000
001573329 - 2938363

S /// STATE OF DELAWARE /// V
T /// SECRETARY OF STATE /// O
A DIVISION OF CORPORATIONS /// I
M FILED 09:00 AM 11/15/2000 /// D
P /// 001573329 - 2938363 ///
BY Cheryl Wyatt

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
NEWENERGY, INC.

Pursuant to Section 242 of the Delaware
General Corporation Law

NEWENERGY, INC., a Delaware corporation, hereby certifies as follows:

FIRST: The Certificate of Incorporation of the Corporation was filed in the Office of the Secretary of State of Delaware on August 27, 1998 and a certified copy was recorded in the Office of the Recorder of Kent County, Delaware. The Certificate of Incorporation was amended on August 12, 1999.

SECOND: The Certificate of Incorporation is hereby further amended to change the name of the Corporation by striking ARTICLE FIRST of the Certificate of Incorporation in its entirety and inserting the following new ARTICLE FIRST as follows:

"FIRST: The name of this corporation shall be:
AES NewEnergy, Inc."

THIRD: This Amendment to the Certificate of Incorporation was duly adopted by the unanimous written consent of the Board of Directors and by the unanimous written consent of the holders of all outstanding stock of the Corporation entitled to vote in accordance with Sections 141(f), 228 and 242 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment of its Certificate of Incorporation to be executed by its Secretary this 15th day of November, 2000.

By: 
Michael Ross, Secretary

**CERTIFICATE OF MERGER
BY AND BETWEEN
AES NEWENERGY, INC., NEWENERGY EAST, L.L.C.,
NEWENERGY MIDWEST, L.L.C., and NEWENERGY CALIFORNIA, L.L.C.**

The undersigned DO HEREBY CERTIFY:

FIRST: That the name and jurisdiction of formation or organization of each of the constituent entities of the Merger are as follows:

<u>NAME</u>	<u>STATE OF DOMICILE AND JURISDICTION OF FORMATION OR ORGANIZATION</u>
AES NEWENERGY, INC.	Delaware
NEWENERGY EAST, L.L.C.	Arizona
NEWENERGY MIDWEST, L.L.C.	Arizona
NEWENERGY CALIFORNIA, L.L.C.	Arizona

SECOND: That a Plan and Agreement of Merger by and between the parties hereto was approved, adopted, certified, executed and acknowledged by each of the constituent entities of the Merger, in accordance with Section 264(c) of the Delaware General Corporation Law.

THIRD: That the name of the surviving Delaware corporation is AES NewEnergy, Inc.

FOURTH: That the Certificate of Incorporation of AES NewEnergy, Inc., which is surviving the merger, shall be the Certificate of Incorporation of the surviving Delaware corporation.

FIFTH: That the executed Plan and Agreement of Merger is on file at the principal place of business of the surviving Delaware corporation, the address of which is 350 South Grand Avenue, Suite 2950, Los Angeles, California 90071.

SIXTH: That a copy of the Plan and Agreement of Merger will be furnished by the surviving Delaware corporation, on request and without cost, to any shareholder of AES NewEnergy, Inc. or any member of NewEnergy East, L.L.C., NewEnergy Midwest, L.L.C. or NewEnergy California, L.L.C.

SEVENTH: That the Merger contemplated by the Plan and Agreement of Merger shall be effective on December 31, 2000.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have caused their respective duly authorized representatives to execute this Certificate of Merger as of the 31st day of December, 2000.

AES NEWENERGY, INC.

By: 
Michael Ross, Secretary

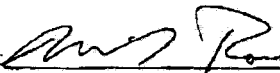
NEWENERGY EAST, L.L.C.

By: AES NewEnergy, Inc.
Its: Sole Member

By: 
Michael Ross, Secretary

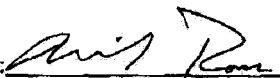
NEWENERGY MIDWEST, L.L.C.

By: AES NewEnergy, Inc.
Its: Sole Member

By: 
Michael Ross, Secretary

NEWENERGY CALIFORNIA, L.L.C.

By: AES NewEnergy, Inc.
Its: Sole Member

By: 
Michael Ross, Secretary

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
AES NEWENERGY, INC.

AES NewEnergy, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation by Unanimous Written Consent adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED, that the Certificate of Incorporation of AES NewEnergy, Inc. be amended by changing the First Article thereof so that, as amended, said Article shall be and read as follows:

FIRST: The name of this corporation shall be "Constellation NewEnergy, Inc."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of sections 242 and 228 of the General Corporation Law of the State of Delaware.

FOURTH: That this Certificate of Amendment of the Certificate of Incorporation shall be effective on September 9, 2002.

IN WITNESS WHEREOF, said AES NewEnergy, Inc. has caused this certificate to be signed by Donna M. Levy, its Secretary, this 9th day of September, 2002.

AES NEWENERGY, INC.

By: Donna M. Levy
Donna M. Levy, Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 10:00 AM 09/09/2002
020561698 - 2938363

CERTIFICATE OF CHANGE OF REGISTERED AGENT
AND
REGISTERED OFFICE

Constellation NewEnergy, Inc., a corporation organized
and existing under and by virtue of the General Corporation Law of the State of
Delaware

DOES HEREBY CERTIFY:

That the registered office of the corporation in the state of Delaware is
hereby changed to Corporation Trust Center, 1209 Orange Street, in the City of
Wilmington, County of New Castle.

That the registered agent of the corporation is hereby changed to THE
CORPORATION TRUST COMPANY, the business address of which is identical
to the aforementioned registered office as changed.

That the changes in the registered office and registered agent of the
corporation as set forth herein were duly authorized by resolution of the Board of
Directors of the corporation.

IN WITNESS WHEREOF, the corporation has caused this Certificate to be
signed by an authorized officer, this 25th day of September
2002.

Constellation NewEnergy, Inc.

Donna M. Levy
Secretary Donna M. Levy (Title)

*Any authorized officer or the chairman or Vice-Chairman of the Board of
Directors may execute this certificate.

Appendix “B”

**Constellation NewEnergy, Inc.
Certificate of Convenience and
Necessity Application
March 20, 2012**

APPENDIX B

List names, titles and ownership percentages of CNE's corporate officers.

<u>Name</u>	<u>Title and Ownership Percentage</u>
Mark Huston	Chief Executive Officer 0%
Andrew Good	Vice President 0%
Jonathan W. Thayer	Chief Financial Officer 0%
Jennifer E. Lowry	Treasurer 0%
Christopher Budzynski	Assistant Treasurer 0%
Charles A. Berardesco	Secretary 0%
Randall D. Osteen	Assistant Secretary 0%
Sean J. Klein	Assistant Secretary 0%
Josh Udler	Assistant Secretary 0%
Mark P. Huston	Director 0%
Kathleen W. Hyle	Director 0%
Edward J. Quinn	Director 0%

Appendix “C”

**Constellation NewEnergy, Inc.
Certificate of Convenience and
Necessity Application
March 20, 2012**

APPENDIX C

Provide a list of CNE's affiliates and subsidiaries.

Affiliates¹

Exelon Corporation (DE)
Constellation Energy Resources, LLC (DE)
MXenergy Electric Inc.
Exelon Energy Company

Subsidiaries²

CCG Synfuel, LLC (DE)
Constellation Alliance, LLC (DE)
Constellation NewEnergy Canada Inc. (Canada)
Low Country Synfuel Holdings, LLC (DE)
Palmetto Synfuel Operating Company, LLC (DE)
Star Electricity, Inc.
Constellation Energy Projects & Services Group Advisors, LLC
BGE Home Products & Services, LLC

¹ For purposes of this application CNE's affiliates are CNE's direct parent, Constellation Energy Resources, LLC, Constellation Energy Resources, LLC's parent, Exelon Corporation and retail electric supplier affiliates, MXenergy Electric Inc. and Exelon Energy Company. Additional affiliates can be provided upon request.

² For purposes of this application the subsidiaries listed are those for which CNE has 100% ownership. Only Star Electricity, Inc., Constellation Energy Projects & Services Group Advisors, LLC, and BGE Home Products & Services, LLC possess any retail electric supplier licenses in any states. Additional subsidiaries where CNE has partial ownership can be provided upon request.

Appendix “D”

**Constellation NewEnergy, Inc.
Certificate of Convenience and
Necessity Application
March 20, 2012**

APPENDIX D

COMPETITIVE ELECTRICITY TARIFF

Constellation NewEnergy, Inc.
Baltimore, MD

A.C.C. No. XXXXX
Tariff No. XXXXX
Effective: XXXX XX, 2012

NON-RESIDENTIAL TARIFF

DESCRIPTION

Under this Tariff, Constellation NewEnergy, Inc. ("CNE") provides competitive retail electricity supply and other competitive energy services to NON-RESIDENTIAL end user customers eligible for direct access within service territories of each of the following utilities: **Arizona Public Service Company, Salt River Project and Tucson Electric Power Company.**

Pursuant to this Tariff, CNE will provide and sell competitive electricity supply and billing services. CNE may also sell, but not physically provide, the meter services and meter reading services of certificated providers of such services.

This is not a "provider of last resort" tariff. Retail customers are not required to select CNE. This Tariff is not available to residential customers. CNE is not a utility transmission and/or distribution company, and does not provide transmission and distribution service.

AVAILABILITY

1. CNE makes electricity supply available under this Tariff to non-residential end user customers. This Tariff is available to customers within the service territories of each of the above-indicated utilities who are eligible for service under non-residential utility rate schedules.
2. CNE may, at its sole discretion, refuse service to an otherwise eligible customer for any of the following reasons: 1) The customer is not credit worthy; 2) The customer refuses to pay the price at which CNE offers electricity supply pursuant to this Tariff; 3) CNE is unwilling to provide or incapable of providing the service requested by the customer at a price the customer is willing to pay; 4) The customer is located in a geographic area where CNE is either not certificated to serve or related service agreements are not established; 5) The customer refuses to sign a contract for service or refuses to accept offered prices, terms and conditions for electricity supply pursuant to this Tariff; 6) The customer is unwilling to wait for the period of time CNE or the applicable utility deems is necessary to begin receiving service from CNE; or 7) The customer does not have the proper electrical equipment infrastructure to receive electricity from CNE.

3. CNE shall not be deemed as having refused service to any customer eligible for service under this Tariff if, in the opinion of such customer, CNE did not respond to a sales inquiry or otherwise present or follow up on a specific sales contract proposal in a time frame desired by said customer.
4. CNE is not required to respond to any request for proposal issued by any customer eligible for service under this Tariff seeking competitive bids from authorized providers of competitive end user electric services.

NON-RESIDENTIAL ELECTRICITY SERVICE AGREEMENT ("NONRES ESA")

1. The terms and conditions for service under this Tariff will be specified in a NONRES ESA executed between CNE and an eligible customer. Subject to the terms of this Tariff, the NONRES ESA will specify the contract duration, prices, deal structure and other terms and conditions of service negotiated by the parties.
2. The NONRES ESA shall specify the specific charges that will apply and the manner in which the supply volumes delivered pursuant to the NONRES ESA shall be determined.
3. The NONRES ESA between CNE and an eligible customer may be supplemented from time to time by riders negotiated and executed by both CNE and eligible customers to specify additional electricity delivery terms and conditions. Such executed riders shall be governed by the terms and conditions of the underlying NONRES ESA.

CHARGES

1. CNE's charges for electricity supply shall be charged at a rate not less than CNE's marginal cost of providing such service, and the Not to Exceed Price will be determined as follows:
 - a. When the NONRES ESA provides for pricing that reflects a specific index price, the Not to Exceed Price will be the specified index plus 35%. The determination that a NONRES ESA is consistent with this provision will be based on the specified index price applicable on the date the NONRES ESA is executed.
 - b. When the NONRES ESA provides for a fixed price electricity supply for the term of the NONRES ESA, the Not to Exceed Price shall be the generation rate of the Customer's applicable retail schedule plus 35%. If the Customer has more than one otherwise applicable retail rate schedule, the highest applicable retail rate schedule will be used for purposes of the consistency determination. The determination that a NONRES ESA is consistent with this provision will be based on the Customer's otherwise applicable retail rate schedule in effect on the date the NONRES ESA is executed.
2. The Not to Exceed Price does not include taxes or any utility charges that are imposed on the customer pursuant to utility tariffs or tariff riders approved by the Commission or Salt River Project's Board of Directors, as the case may be, including

utility network transmission and distribution charges, systems benefit charges, or any surcharges imposed by the utility.

3. The NONRES ESA may contain provisions for the cost pass-through of certain component charges not included in the relevant index price, but that are required or related to the electricity supply provided by CNE. These components may include capacity, ancillary services, renewable energy, congestion costs, broker fees, and scheduling costs. The Not to Exceed Price does not include any such cost pass-through charges. Components of the charges established in the NONRES ESA as cost pass-through charges may vary on a month to month basis pursuant to the terms of the NONRES ESA.
4. The NONRES ESA may contain provisions for Metering Services to be provided by a Commission certificated meter service provider at a market based charge not to exceed the provider's maximum Commission-approved charge, and passed through by CNE without mark-up to the customer.
5. The NONRES ESA may contain provisions for Meter Reading Services to be provided by a Commission authorized meter reading services provider at a market based charge, not to exceed the provider's maximum Commission-approved charge, and passed through without mark-up by CNE.
6. The NONRES ESA will provide for Billing and Collection services at charges negotiated between CNE and the eligible customer. Such charges may vary depending on whether CNE or the utility is providing billing and collection services.

OTHER PROVISIONS

1. CNE may express negotiated electricity supply prices in terms of discounts (percentage or otherwise) from bundled regulated services (i.e., Standard Offer Service) in contracts and monthly bills, or in any other manner or pricing structure.
2. CNE may seek to change, amend or revise this Tariff at any time upon application to the Commission. Any such amendments, changes, or revisions shall become effective only upon approval by the Commission, and shall be implemented by CNE only prospectively. Such approved changes, amendments or revisions shall not operate to amend, modify, change or revise NONRES ESAs entered into prior to the effective date of such approved changes, amendments or revisions of this Tariff, unless the prospect of such change is expressly provided for within the NONRES ESA.

Appendix “E”

**Constellation NewEnergy, Inc.
Certificate of Convenience and
Necessity Application
March 20, 2012**

APPENDIX E

COMPETITIVE ELECTRICITY TARIFF

Constellation NewEnergy, Inc.
Baltimore, MD

A.C.C. No. XXXXX
Tariff No. XXXXX
Effective: XXXX XX, 2012

RESIDENTIAL TARIFF

DESCRIPTION

Under this Tariff, Constellation NewEnergy, Inc. ("CNE") provides competitive retail electricity supply and other competitive energy services to RESIDENTIAL end user customers eligible for direct access within service territories of each of the following utilities: **Arizona Public Service Company, Salt River Project and Tucson Electric Power Company.**

Pursuant to this Tariff, CNE will provide and sell competitive electricity supply and billing services. CNE may also sell, but not physically provide, the meter services and meter reading services of certificated providers of such services.

This is not a "provider of last resort" tariff. Retail customers are not required to select CNE. This Tariff is only available to residential customers. CNE is not a utility transmission and/or distribution company, and does not provide transmission and distribution service.

AVAILABILITY

1. CNE makes electricity supply available under this Tariff to residential end user customers. This Tariff is available to customers within the service territories of each of the above-indicated utilities who are eligible for service under residential utility rate schedules.
2. CNE may, at its sole discretion, refuse service to an otherwise eligible customer for any of the following reasons: 1) The customer is not credit worthy; 2) The customer refuses to pay the price at which CNE offers electricity supply pursuant to this Tariff; 3) CNE is unwilling to provide or incapable of providing the service requested by the customer at a price the customer is willing to pay; 4) The customer is located in a geographic area where CNE is either not certificated to serve or related service agreements are not established; 5) The customer refuses to enter into an agreement for service or refuses to accept offered prices, terms and conditions for electricity supply pursuant to this Tariff; 6) The customer is unwilling to wait for the period of time CNE or the applicable utility deems is necessary to begin receiving service from CNE; or 7) The customer does not have the proper electrical equipment infrastructure to receive electricity from CNE.

3. CNE shall not be deemed as having refused service to any customer eligible for service under this Tariff if, in the opinion of such customer, CNE did not respond to a sales inquiry or otherwise present or follow up on a specific sales contract proposal in a time frame desired by said customer.
4. CNE is not required to respond to any request for proposal issued by any customer eligible for service under this Tariff seeking competitive bids from authorized providers of competitive end user electric services.

RESIDENTIAL TERMS AND CONDITIONS (RES Ts&Cs)

1. The terms and conditions for service under this Tariff will be specified in a RES Ts&Cs document executed between CNE and an eligible customer. Subject to the terms of this Tariff, the RES Ts&Cs will specify the contract duration, prices, deal structure and other terms and conditions of service negotiated by the parties.
2. The RES Ts&Cs shall specify the specific charges that will apply and the manner in which the supply volumes delivered pursuant to the RES Ts&Cs shall be determined.
3. The RES Ts&Cs between CNE and an eligible customer may be supplemented from time to time by riders negotiated and executed by both CNE and eligible customers to specify additional electricity delivery terms and conditions. Such executed riders shall be governed by the terms and conditions of the underlying RES Ts&Cs.

CHARGES

1. CNE's charges for electricity supply shall be charged at a rate not less than CNE's marginal cost of providing such service, and the Not to Exceed Price will be determined as follows:
 - a. When the RES Ts&Cs provides for pricing that reflects a specific index price, the Not to Exceed Price will be the specified index plus 35%. The determination that RES Ts&Cs are consistent with this provision will be based on the specified index price applicable on the date the RES Ts&Cs are executed.
 - b. When the RES Ts&Cs provide for a fixed price electricity supply for the term of the RES Ts&Cs, the Not to Exceed Price shall be the generation rate of the Customer's applicable retail schedule plus 35%. If the Customer has more than one otherwise applicable retail rate schedule, the highest applicable retail rate schedule will be used for purposes of the consistency determination. The determination that RES Ts&Cs are consistent with this provision will be based on the Customer's otherwise applicable retail rate schedule in effect on the date the RES Ts&Cs are executed.
2. The Not to Exceed Price does not include taxes or any utility charges that are imposed on the customer pursuant to utility tariffs or tariff riders approved by the Commission or Salt River Project's Board of Directors, as the case may be, including utility network transmission and distribution charges, systems benefit charges, or any surcharges imposed by the utility.
3. The RES Ts&Cs may contain provisions for the cost pass-through of certain component charges not included in the relevant index price, but that are required or

related to the electricity supply provided by CNE. These components may include capacity, ancillary services, renewable energy, congestion costs, broker fees, and scheduling costs. The Not to Exceed Price does not include any such cost pass-through charges. Components of the charges established in the RES Ts&Cs as cost pass-through charges may vary on a month to month basis pursuant to the terms of the RES Ts&Cs.

4. The RES Ts&Cs may contain provisions for Metering Services to be provided by a Commission certificated meter service provider at a market based charge not to exceed the provider's maximum Commission-approved charge, and passed through by CNE without mark-up to the customer.
5. The RES Ts&Cs may contain provisions for Meter Reading Services to be provided by a Commission authorized meter reading services provider at a market based charge, not to exceed the provider's maximum Commission-approved charge, and passed through without mark-up by CNE.
6. The RES Ts&Cs will provide for Billing and Collection services at charges negotiated between CNE and the eligible customer. Such charges may vary depending on whether CNE and/or the utility is providing billing and collection services.

OTHER PROVISIONS

1. CNE may express negotiated electricity supply prices in terms of discounts (percentage or otherwise) from bundled regulated services (i.e., Standard Offer Service) in contracts and monthly bills, or in any other manner or pricing structure.
2. CNE may seek to change, amend or revise this Tariff at any time upon application to the Commission. Any such amendments, changes, or revisions shall become effective only upon approval by the Commission, and shall be implemented by CNE only prospectively. Such approved changes, amendments or revisions shall not operate to amend, modify, change or revise RES Ts&Cs entered into prior to the effective date of such approved changes, amendments or revisions of this Tariff, unless the prospect of such change is expressly provided for within the RES Ts&Cs.

Appendix “F”

**Constellation NewEnergy, Inc.
Certificate of Convenience and
Necessity Application
March 20, 2012**

APPENDIX F

Exelon Corporation's financial statements for the twelve (12) months ended Dec. 31, 2011 can be found in SEC Form 10-K located at the link below.

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001109357&owner=exclude&count=40>

Constellation Energy Group, Inc.'s financial statements for the twelve (12) months ended Dec. 31, 2011 can be found in SEC Form 10-K located at the link below.

<http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001004440&owner=exclude&count=40>

Appendix “G”

**Constellation NewEnergy, Inc.
Certificate of Convenience and
Necessity Application
March 20, 2012**

APPENDIX G

Describe CNE's experience as a competitive supplier of electricity.

Since the commencement of business in April 1995, CNE and its predecessors in interest have become one of the leading competitive electricity suppliers serving a combination of commercial, industrial, governmental and residential customers in all open and active restructured markets throughout North America, providing products that enable customers to effectively manage and control energy costs. CNE's regional expertise coupled with its North American presence provides customers with customized energy products and services, while leveraging the assets of one of the strongest energy companies in North America. CNE, based in Baltimore, Maryland, serves more than 90,000 business and public sector customers and nearly one million residential customers throughout 17 states and the District of Columbia.

In addition to a leading competitive electricity supplier with 57 million MWh full requirements load-serving product in 2010, CNE is a well-rounded leader of energy solutions offering:

- Natural Gas: 334 million mmBTUs delivered in open retail markets in 2010;
- Load Response: 1,500 MW of dispatchable load in 2010;
- Energy Efficiency: 141,315 MWh conserved by customers in 2010; and
- Solar: 95 MW of solar installations completed or under construction in 2011.

CNE Electric Supplier Licenses

State	License Number
CA	1359
CT	99-11-14
DC	EA01-5
DE	00-162
IL	99-0447/03-0325
MA	CS-015/CS-030
MD	IR-500, IR-522
ME	1999-809/2000-989
MI	U13660/U-14867
NH	DM10-126
NJ	PESL-0016
NY	N/A
OH	00-003-1/00-003-2
OR	Order 02-031/02-777
PA	A-110036
RI	D-96-6(e)
TX	10014
VA	E-11A

CNE Products

Today, CNE customers can manage and control costs in new and powerful ways, using the latest information and technology. Customers receive competitive pricing, expertise to help them decide the best times to purchase, and a full range of products to choose from.

Core Products:

Fixed Price Solutions – Gives customers one fixed price per kWh throughout their contract term:

- Price certainty – one fixed price for all usage;
- Simplicity – make a one-time decision and get an easy-to-understand bill;
- Easy budget management – manage to the budget because the price is fixed in advance for all usage; and
- Usage variance protection – keep a fixed price even when usage varies from events beyond the customer's control, such as a long summer heat wave.

Index Plus Block Solutions – The default energy price is the spot-market index price, which varies hourly; customers can purchase fixed volumes of electricity (blocks) at fixed prices during the term of the contract:

- Flexibility – change how much usage is at a fixed price;
- The ability to take advantage of market events – make purchases when market events present buying opportunities; and
- Lower price – avoid the additional cost for usage variance protection (customers take the risk of market prices for usage not covered by a fixed price block).

Flexible Index Solutions – The default energy price is the spot-market index price, which varies hourly. Customers can purchase fixed price percentages of usage during the term of the contract hedging up to 100% of usage in any or all calendar months allowing for:

- Flexibility – change how much usage is at a fixed price;
- Price certainty – fixed prices for some or all usage; and
- The ability to take advantage of market events – make purchases when market events present buying opportunities.

Value-Added Products: In addition, where appropriate, CNE also makes the following are products and services available to customers:

Renewable Energy – CNE offers Green-e Energy Certified Renewable Energy Certificates (RECs) from wind power to meet customer's environmental and budget objectives which:

- Support the operation of renewable power plants;
- Produce zero emissions of greenhouse gases and no harmful pollutants; and
- Promote sustainable energy programs in the U.S.

i2i – allows customers to meet the challenge of today's turbulent energy markets.

- CNE links customer's budgetary needs and risk tolerance with global energy market data and expert analysis to create customized purchasing strategies and
- Ensures customer's energy-purchasing strategy is aligned with business needs.

Minimize Volatile Pricing (MVP) – reduces exposure to electricity price volatility through an automated time-diversifying program.

- CNE makes targeted purchases of energy for customers based on an advanced mathematical methodology and
- Ensures higher percentages of load are locked in when prices are lower.

Demand Response Technologies – provides a way for companies to respond to energy market and demand changes.

- Streamlines processes to improve the efficiency of the customer's business.
- VirtuWatt,TM an online application, makes it easy for customers to monitor and manage their energy usage and demand response.

Solar Power – an important and fast-growing part of the nation's energy supply.

- Clean technology – a great option for those seeking an alternative to fossil fuel technologies.
- Sustainable – if a customer's organization is seeking to develop sustainable and responsible strategies, solar and other green technologies can help.
- Solar expertise – we can design, install and maintain your solar project.

Energy Efficiency – CNE offers a full range of energy services to maximize efficiency, minimize costs and reduce emissions.

- Technical solutions – including retrofits and upgrades, facility modernization, and on-site generation from renewable sources.
- Conservation programs – CNE can help create conservation programs for customer's organizations.
- Financial solutions – with no upfront capitalization, paid for from guaranteed savings.

Key Technical Personnel

Paula Corey – Vice President, Customer Care

paula.e.corey@constellation.com

713-401-2030

Ms. Corey is a program manager with 38 years of financial and operational leadership experience with public firms in technology, telecom, professional services, strategic sourcing and outsourcing initiatives.

Ms. Corey has been fortunate to enjoy both IT and finance careers which have included a wide variety of experience and exposure. Ms. Corey has gained a specialized proficiency in detailed financial assessments of operations and solutions implementation. She has achieved

professional growth through responsibility for strategic planning, facilities management, finance, market data, sales, information systems, operations and Customer Care developing a well rounded thorough understanding of all aspects of business.

Over the past 30 years Ms. Corey has been utilizing operations and financial expertise gained in supporting technology and projects through growth and bankruptcy. She has a long record of reducing costs and streamlining operations in a wide range of situations, through analysis of models, cultivation of necessary data, drilling down into the cost structure underlying the delivery and support of services and either seeking more cost effective alternatives / processes, eliminating revenue and cost leakage or enhancing business processes.

Prior to joining CNE, Ms. Corey held Vice President, Senior Director and Director positions for large publicly traded companies including JP Morgan Chase, Enron, Lehman Brothers and Illinois Bell (Ameritech).

Ms. Corey is skilled in all areas of operations including operational efficiency in back office systems / functions, facilities management provisioning and customer care. If CNE were to become a registered supplier in Arizona, Ms. Corey will continue to head the CNE customer care group, with overall responsibility for providing ongoing support and problem resolution services to our Arizona customers.

John Domagalski, Vice President, Market & Product Development

john.domagalski@constellation.com

312.704.1797

Mr. Domagalski is Vice President of Product and Market Development of Retail Energy for CNE. Named to that position in 2009, he works on the development of new product ideas and is the commercial lead on new markets. Mr. Domagalski has been the business lead on CNE's entry into retail energy markets in Illinois, Ohio, and Pennsylvania. He was also the commercial lead in the recent (2009-2012) limited reopening of the California retail power market. From 2004 to 2009, he served as Vice President of Retail Pricing and Products for the company's retail energy division.

Prior to CNE, he spent over ten years as a strategy consultant for PricewaterhouseCoopers, International Business Machines, and Ernst & Young. Mr. Domagalski advised executives, governments, and regulators on electric industry restructuring around the world. Contributions include advising the Government of Alberta, Canada, on establishing the rate of return on generating assets in connection with transitioning to a more competitive market. In another example, he supported the restructuring of the Brazilian electricity sector by working with stakeholders and policymakers on developing the detailed specifications of a Brazilian Power Exchange.

Mr. Domagalski received his B.S. in Commerce from DePaul University, and a joint M.B.A. from Northwestern University's Kellogg School of Management and the WHU - Otto Beisheim School of Management (located in Germany).

If CNE were to become a registered supplier in Arizona, Mr. Domagalski would be the market development lead, with overall responsibility for managing market planning and entry efforts.

Jeff Dryja – Vice President, Retail Power Pricing

jeff.dryja@constellation.com

410-470-1866

Mr. Dryja has been with CNE for over 12 years. As Vice President of Retail Power Pricing he is responsible for the Retail Power Pricing in all the markets that CNE is licensed to operate to serve its customers cost effective electric power.

Prior to his current role, Mr. Dryja was Chief Risk Officer of CNE. Mr. Dryja has had a variety of commercial responsibilities in the deregulated natural gas business; the petroleum trading, refining, and distribution business as well as energy risk management consulting; and petroleum broking.

Mr. Dryja is a past member of the International Energy Credit Association; was a past member of the National Energy Marketers Association and its Risk Valuation, Management & Accountability Task Force; was a past member of the New York ISO Credit Policy Group that was responsible for the drafting and implementation of its credit risk policy and procedures of this Independent System Operator.

Mr. Dryja received his BA in Economics from Boston College in 1981.

Michael P. Kagan, Chief Retail Sales Officer

michael.kagan@constellation.com

410.470.2106

Mr. Kagan is the Chief Retail Sales Officer for CNE - a leading nationwide supplier of energy and energy services to over 30,000 residential, commercial, industrial, government and institutional customers serving 14,000 MWs.

Named to the position in July, 2010 Mr. Kagan directs an organization of over 200 sales professionals that help customers intelligently buy, manage and use their energy through an integrated approach that addresses energy, business and sustainability goals. If CNE became a registered supplier in Arizona, Mr. Kagan and his sales organization would work with customers in Arizona to determine what product, or suite of products, would be most appropriate to help those customers achieve their energy-related goals.

From 2007 to 2010, Mr. Kagan served as president of CNE's Power Division where he led the United State's largest competitive retail power supplier to businesses and was responsible for overall company performance.

Mr. Kagan started with CNE in 1998 and has served in a variety of positions including chief commercial officer responsible for major accounts and product development, vice president for the New England region, vice president of supply and trading, and manager of electricity pricing. Throughout his career at CNE, he has overseen the expansion of the retail business into all competitive energy markets with innovative energy and risk management products, technologies and solutions.

Before joining CNE, Mr. Kagan held various positions in the energy industry including manager of risk assessment for PG&E Energy Services and consultant at Barakat & Chamberlin - a consulting firm serving energy and regulated industries. Early in his career, he worked as an analyst at the Environmental Defense Fund focusing on electric vehicle implementation issues.

Mr. Kagan earned his B.A. in economics and business from Skidmore College in Saratoga Springs, NY and his M.S. in economics from the University of California, Santa Barbara.

Robert Louisy – Vice President, Billing and Retail Settlements

robert.louisy@constellation.com

713-401-2080

Mr. Louisy has over 18 years of experience in IT, Telecom and the electricity industry. He has acted in several capacities including owner of a wholesale electricity billing company, consultant to one of the two deregulated Canadian ISOs, consultant to utility entities, energy broker for commercial and industrial customers, and a consultant to one of the largest suppliers of natural gas and power in Western Canada. During his formative years in IT, Mr. Louisy worked in for Intel Corporation in the Client Architecture group and co-published a paper on Intel's approach to implementing the Microsoft x.500 directory services as part of their network and messaging strategy.

Mr. Louisy created a wholesale billing platform that served large Oil and Gas organizations including Husky Canada Inc., Enron Direct Canada, TransCanada Pipelines and Suncor. Mr. Louisy was instrumental in setting up the computing infrastructure and managing the project to develop the transmission tariff billing platform for the Irish firm Electricity Supply Board International (ESBI), during their tenure as the Alberta System Electric Operator (AESO) in Alberta, Canada. He also participated in the startup activities and ongoing operational consulting to a subsidiary of one of the largest national incumbent local exchange carriers (ILEC) in Canada, Bell Intrigna.

Mr. Louisy has held progressively senior positions with CNE and along with his duties as

Vice President of Billing and Retail Settlements, manages strategic operations projects for the CNE Retail business in Houston. If provided the opportunity to serve customers in Arizona, Mr. Louisy and his team would work with utility staff to set up communication and data exchange protocols and systems, ensuring that CNE has all the information required to seamlessly support customer enrollments, billing, tax submissions, and retail and will ensure the appropriate production support is available for CNE to deal with any backend issues that may arise. He holds a Masters of Business Administration from the University of Calgary.

Mary Lynch – Vice President, Energy Policy

mary.lynch@constellation.com

916-606-0783

Ms. Lynch has worked as Vice President of Regulatory and Legislative Affairs at CNE Commodities Group since June 2002. Since 2005, she has been responsible for CNE's wholesale market regulatory and legislative affairs in the WECC region, with a particular focus on market development issues, including retail choice, resource adequacy, capacity markets, utility procurement practices, and emerging environmental requirements.

Prior to coming to the West in 2005, Ms. Lynch had lead regulatory responsibilities for CNE's business in the PJM region, and participated extensively in working groups and committees at PJM that focused on electric market design and operation. She also has participated extensively in state regulatory proceedings dealing with the development and design of wholesale competitive energy procurement practices in Maryland, New Jersey, the District of Columbia, Pennsylvania, Illinois, Delaware, Ohio, and New York.

Prior to joining CNE, from 1998 through May of 2002, Ms. Lynch served as a vice president with Orion Power Holdings with responsibility for managing the procurement of fossil fuel supplies as well as managing regulatory affairs, with a primary focus on the New York state electric markets. From 1983 through 1998, she held various positions with New England Power Company and U.S. Generating Company managing natural gas supplies procurement operations. She is a graduate of California State University at Northridge with a Bachelor of Arts degree in Biology and from Northeastern University (Boston, Massachusetts) with a Masters in Business Administration.

In Arizona, Ms. Lynch is responsible for managing CNE's participation in proceedings before the Corporation Commission, monitoring and participating as necessary in energy-related legislative matters, and in monitoring the development and implementation of energy regulations that would impact CNE's business interests in Arizona.

Ed MacKay – Vice President, Portfolio Management

edward.j.mackay@constellation.com

410-470-3401

Mr. MacKay has seventeen years of energy industry experience, and has focused his efforts on portfolio management and optimization for the last twelve years, primarily in the WSCC. Since joining CNE in 2007 he has been managing the California load business, including hedging portfolio risk for energy, capacity and renewable energy.

If CNE were to become a registered supplier in Arizona, Mr. MacKay and team would take the responsibility of monitoring the western electricity markets, forecasting load and buying and selling power in wholesale markets to support our Arizona customers.

Mr. MacKay has Bachelor and Master Degrees in Economics from the University of Calgary.

Mathew Motsinger – Director, Products and Pricing

mathew.motsinger@constellation.com

713-646-6723

Mr. Motsinger has over twelve years of energy industry experience, with the last eight years in retail power. Prior to CNE, Mr. Motsinger worked for Enron and UBS Warburg. He joined CNE in 2003 in an operational role, but has been involved in product development and retail power pricing since late 2003. He is currently the Director of Products and Pricing for the ERCOT and CAISO markets.

Mr. Motsinger has a Bachelors Degree in Accounting from the University of Houston.

Provided CNE becomes a registered supplier in Arizona, Mr. Motsinger and his team would be responsible for providing competitive retail pricing for Arizona customers.

Appendix “H”

**Constellation NewEnergy, Inc.
Certificate of Convenience and
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APPENDIX H

Provide a description of CNE's technical ability to obtain and supply electricity.

CNE provides all components necessary for the supply of electricity to the end user, which may include ancillary services. CNE relies on its affiliate, Constellation Energy Commodities Group, Inc. ("CCG") to support portfolio management, trading and scheduling group to accommodate its retail load across the country. Located in Baltimore, Maryland, this group is organized by geographic regions and is responsible for providing the energy supply requirements for CNE's entire U.S. retail load, and is responsible for the execution and purchasing of power, transmission and other necessary components of retail service for all of CNE's customers. The group also includes accounting, credit and legal support personnel.

CCG maintains a 24-hour desk, which began operation on September 13, 1999 and assures accessibility for counterparties and system operators, 24 hours a day, 365 days a year. The individuals manning the 24-hour desk also act as schedulers and have experience coordinating with control centers for scheduling changes, reserve implementation, curtailment orders and interruption plan implementation; the trading, scheduling, and operations professionals have extensive experience with OASIS reservations and the NERC tagging process.

CNE has a great deal of experience in markets across the U.S. working with utility staff to set up a process of communicating on the backend, ensuring that CNE has all the information required to seamlessly support usage data acquisition, enrollments, billing, tax submissions, retail settlements with utilities and ISOs, etc. CNE is capable of exchanging data through all widely accepted methods including but not limited to electronic data interchange, HTML, file transfer protocol, Tibco, web scrapers and service-oriented architecture. Production support is available to resolve any backend issues that may arise with a transaction.

CNE utilizes leading application solutions to manage the opportunity to cash process. The Customer Relationship Management ("CRM") system is a robust application used to capture and maintain all customer account data. Our billing and meter data management solution is used for managing meter, pricing, load profiling, forecasting, settlement and customer billing data. All data are backed up and stored in accordance with accepted industry standards and guidelines for enterprise corporate data. Data is secured behind firewalls, and protected with access controls, and monitoring solutions to assure the confidentiality, integrity, and availability of our systems.